



Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

opinions given on the trial: the refusal to grant one instruction, the granting of another and the overruling of the motion for a new trial. The motion for a new trial is the only one of the three which would have intercepted judgment after the verdict.

2. CITY ORDINANCE—*Renting market stalls at auction—Fees of auctioneer.* A city ordinance which authorizes an officer to rent stalls in the market house at public auction does not authorize him to employ an auctioneer at the expense of the city. He is limited to his salary as compensation for all duties to be performed by him, unless otherwise provided either expressly or by necessary implication. A renting at public auction simply required it to be made in public to the highest bidder. A regular auctioneer was wholly unnecessary to the validity of the renting.

FERGUSON & CO. AND OTHERS V. DAUGHTREY AND OTHERS.—

Decided at Richmond, February 11, 1897.—*Riely, J :*

1. FRAUDULENT CONVEYANCES—*How fraud established.* Insolvency does not deprive the owner of property of the right to sell it, unless the sale be made with intent to hinder, delay, and defraud his creditors; and even then the title of the purchaser will not be invalidated if the sale is for valuable consideration and the purchaser has no notice of the fraudulent intent of the grantor. It is not necessary, however, to prove positive knowledge of the fraudulent intent of the grantor. It is sufficient to prove that the grantee had knowledge of facts and circumstances which were naturally and justly calculated to excite suspicion in the mind of a person of ordinary care and prudence and would prompt him to inquire into the transaction, which inquiry would necessarily lead to a discovery of the inculpatory facts. Fraud may be established by circumstances alone. In the case at bar the evidence established the fraud of the grantor and the guilty knowledge of the grantee.

2. EVIDENCE—*Examination of adversary—Adversary's evidence may overcome his answer.* Under the provisions of sec. 3351 of the Code a party calling his adversary to testify as a witness may examine him according to the rules applicable to cross-examination, and while he may not impeach such adversary as a witness, he is entitled to the benefit of all facts elicited from him tending to prove the illegality of the transaction under investigation, notwithstanding his denial of fraud. So where a party seeking to impeach a transaction for fraud, calls as witnesses the parties to the transaction, which, owing to the exigencies of the case he may be compelled to do, and proves by them facts from which the law infers fraud, or which are inconsistent with good faith, and outweigh and overcome their denial of fraud, effect should be given to the facts so proved and the transaction be annulled.

UNION BANK OF RICHMOND V. CITY OF RICHMOND.—Decided at Richmond, February 11, 1897.—*Harrison, J :*

1. BANK STOCK—*How shares taxed—Non-taxable capital—Power of city of Richmond to tax.* The city of Richmond having, under its charter, a general power of taxation, may levy a tax for local purposes on the shares of stock of a bank located in the city, and, in estimating the value of such shares, need not deduct any portion of the capital of the bank exempt from taxation. The shares of

stock are distinct and different from the capital of the bank. The shares may be taxed though the capital itself be invested in non-taxable securities. And the officers of the bank may be required, under the provisions of Acts 1883-84, p. 568, sec. 17, to pay the tax on the shares so assessed. In no other way can the shares of non-residents, shareholders, be reached. This provision of the Act does not render the tax a tax on the capital of the bank.

2. *BANK STOCK—Situs for taxation—Pleading—Amendments.* The situs of bank stock for the purpose of taxation is, under the provisions of Acts 1883-84, p. 568, sec. 7, the place where the bank is located, and it is immaterial where the stockholder resides. Hence it is not error to refuse to allow amendments to the pleadings merely averring the non-residence of a certain number of the stockholders.

3. *COURT OF APPEALS—Errors not brought to attention of trial court.* Alleged errors which are outside of the pleadings and do not appear ever to have been brought to the attention of the trial court, will not be considered, on error or appeal, in the Court of Appeals.

BANKERS LOAN & INVESTMENT CO. AND OTHERS V. HORNISH AND OTHERS.—Decided at Wytheville, June 17, 1897.—*Harrison, J* :

1. *DEEDS OF TRUST—Intermediate judgments—Subrogation—Assignments.* A third person who advances money to pay off notes given for the purchase price of real estate secured by a first deed of trust thereon, and who stipulates that he is to have a first lien, and pays to the holder of the notes the full amount thereof and takes them in uncanceled, and holds them by consent of all parties for further protection, and to avoid all contingencies and complications, and also takes a deed of trust on the land to secure the loan, is entitled to be subrogated to the rights of the holder of said notes and has priority over intervening judgment creditors of the grantor. It was not necessary to take an assignment of the notes. Subrogation is the act of the law and the creature of a court of equity, and depends upon principles of law and justice and not upon contract.

2. *PLEADING—Subrogation.* The right of subrogation need not be specifically claimed in the answer of one entitled to its benefits. It is sufficient if the facts alleged and established by the evidence justify its application at the instance of a party asking its aid and protection.

MARCHANT AND ANOTHER V. HEALY AND OTHERS.—Decided at Wytheville, June 17, 1897.—*Buchanan, J* :

1. *APPEALS—Amount in controversy—Dismissal.* The amount in controversy in this case is the difference between the amount claimed by the appellants and the amount recovered, and this sum being less than \$500 the appeal will be dismissed, although appellees raised no objection to the jurisdiction of the court.

BUFORD AND OTHERS V. NORTH ROANOKE LAND CO.—Decided at Wytheville, June 17, 1897.—*Keith, P* :

1. *APPEALS—Refusal of bill of review—When petition for appeal must be presented.* Under the terms of sec. 3455 of the Code the petition for an appeal from a decree refusing a bill of review to a decree rendered more than six months prior thereto